

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

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UNITED STATES OF AMERICA, for the use  
and benefit of SEEDORFF MASONRY, INC.,

Plaintiff,

v.

ARCHER WESTERN CONSTRUCTION,  
LLC and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

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CASE NO. \_\_\_\_\_

PLAINTIFF’S COMPLAINT & JURY  
DEMAND

Plaintiff United States of America for the use and benefit of Seedorff Masonry, Inc.

(hereinafter “Seedorff”) for its Complaint, states as follows:

**THE PARTIES & VENUE**

1. Seedorff is a corporation organized and existing under the laws of the State of Iowa, with its principal office and place of business located at 408 W. Mission Street, Strawberry Point, Clayton County, Iowa.

2. Seedorff is in the business of providing masonry products, materials, and services for construction projects throughout the United States.

3. Defendant Archer Western Construction, LLC (hereinafter “Archer”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 929 West Adams Street, Chicago, Illinois.

4. Defendant Travelers Casualty and Surety Company of America (hereinafter “Travelers”) is a corporation organized and existing under the laws of the State of Minnesota,

with its principal executive offices located at 485 Lexington Avenue, New York, New York.

Defendant Travelers is duly authorized to engage in the business of executing surety bonds.

5. This cause of action arises, and the Court has jurisdiction, pursuant to the Miller Act, 40 U.S.C.A. §§ 3131 to 3134.

6. Venue is proper in this district because the principal contract described below in paragraph 8, between Defendant Archer and the United States of America, acting by and through the Department of Veterans Affairs, was to be performed and executed in the District of Nebraska.

### **COUNT I - MILLER ACT VIOLATION**

7. Seedorff incorporates and repleads paragraphs 1 – 6 herein.

8. On or about September 3, 2014, Defendant Archer entered into a contract, herein referred to as the principal contract, in writing with the United States of America, acting by and through the Department of Veterans Affairs, to furnish the materials and perform the labor for the construction of the new National Cemetery (hereinafter “VA Cemetery”) in accordance with the specifications contained in the principal contract, for a consideration of \$20,000,000 to \$50,000,000. The principal contract was designated Department of Veterans Affairs – VA Omaha Cemetery, Contract No. VA101F-14-C-0038.

8. On or about October 8, 2014, pursuant to the terms of the contract, Defendant Archer, as principal, and Defendant Travelers, as surety, executed and delivered to the United States their bond conditioned as required by the Miller Act, for the protection of all persons supplying labor and materials in the prosecution of the work provided for in the principal contract.

10. On or about September 11, 2015, Seedorff entered into a Subcontract Defendant Archer, by the terms of which Seedorff agreed to furnish all labor, materials, and equipment necessary to install all masonry required for the construction of the VA Cemetery under the principal contract between Defendant Archer and the United States of America. A copy of this subcontract is attached hereto as **Exhibit 1**, and is incorporated herein by reference.

11. Seedorff performed its duties under the contract with Defendant Archer, providing labor, materials, and equipment as prescribed in the subcontract. The reasonable value of such materials is \$3,163,947.00. Defendant Archer has paid \$1,908,037.00 towards these services, leaving an unpaid balance of \$1,255,910.00.

12. Upon information and belief, Defendant Archer has charged the United States of America for Seedorff's services in the amount of \$3,321,000.00 and has received payment in full.

13. Notwithstanding Seedorff's demands on Defendant Archer for payment, such balance has not been paid in full and there is now justly due and owing to Seedorff the sum of \$1,255,910, that amount being the remaining and reasonable value of the goods, services, and materials provided.

14. Defendant Archer breached its contract with Seedorff in that it failed and refused to pay Seedorff the remaining moneys owed for the value of the labor, services, and materials provided.

15. The date on which the last equipment was supplied to Defendant Archer was October 23-24, 2017. A period of more than 90 days has elapsed since such date, and Seedorff has not been paid in full for the equipment furnished for prosecution of the principal contract.

16. All conditions precedent for the bringing and maintenance of this action have been performed or have occurred.

WHEREFORE, Plaintiff United States of America for the use and benefit of Seedorff Masonry, Inc. respectfully requests judgment against Defendants in the amount of \$1,255,910, plus interest, attorneys' fees, and the costs of this action, and for such other and further relief as the Court deems just and equitable.

### **COUNT II – UNJUST ENRICHMENT**

17. Seedorff incorporates and repleads paragraphs 1 – 16 herein.

18. Defendant Archer has enjoyed the value and benefit of the materials, goods, and services provided by Seedorff.

19. The materials, goods, and services were provided by Seedorff pursuant to the contract between it and Defendant Archer and were accepted by Defendant Archer with the full knowledge and consent, and without objection.

20. Seedorff has performed each and every obligation imposed on it under the contract with Defendant Archer.

21. Upon information and belief, Defendant Archer has been compensated for the value of the materials, goods, and services provided.

22. Defendant Archer will be unjustly enriched unless it is ordered to pay Seedorff the value of the materials, goods, and services ordered by, provided to, and accepted by Defendant Archer.

23. The reasonable and value of such materials is \$3,163,947. Defendant Archer has paid \$1,908,037 towards these services, leaving an unpaid balance of \$1,255,910.

WHEREFORE, Plaintiff United States of America for the use and benefit of Seedorff Masonry, Inc. respectfully requests judgment against Defendants for the reasonable value of the materials, goods, and services provided, plus interest, attorneys' fees, and the costs of this action, and for such other and further relief as the Court deems just and equitable.

**COUNT III – BREACH OF NEBRASKA'S  
CONSTRUCTION PROMPT PAYMENT ACT**

24. Seedorff incorporates and repleads paragraphs 1 – 23 herein.

25. The work to be performed pursuant to the principal contract was located in and around Omaha, Nebraska.

26. Pursuant to the subcontract agreement between Seedorff and Defendant Archer, the law of the state in which the project was located was the governing law. *See Exhibit 1*, Article 11, paragraph 11.1.

27. Nebraska requires subcontractors such as Seedorff to be paid within ten days of the contractor receiving final or periodic payments. Neb. Rev. Stat. § 45-1203 (2018).

28. The date on which the last equipment was supplied to Defendant Archer was October 23–24, 2017.

29. Upon information and belief, Defendant Archer received final payment from the United States of America for Seedorff's services in August 2017. More than 10 days have elapsed since this payment date.

30. Due to Defendant Archer's continued failure to make a full and final payment on the subcontract, Seedorff is entitled to interest as set forth in Nebraska Code § 45-1205. Neb. Rev. Stat. § 45-1205 (2018).

31. Furthermore, Seedorff seeks attorneys' fees and the costs of this action as permitted by Nebraska Code § 45-1211. Neb. Rev. Stat. § 45-1205 (2018).

WHEREFORE, the United States of America, for the use and benefit of Seedorff Masonry, Inc., respectfully requests judgment against Defendants Archer Western Construction, LLC and Travelers Casualty and Surety Company of America, and all of them, jointly and separately for the sum of \$1,255,910, together with interest at the legal rate on such amount awarded as allowed by law, for the costs of this action, and for such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff United States of America for the use and benefit of Seedorff Masonry, Inc. hereby demands a trial by jury on all issues so triable. Trial is requested to be held in Omaha, Nebraska.

*s/Mark P.A. Hudson*

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MARK P.A. HUDSON 22783

for

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ATTORNEYS FOR PLAINTIFF

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